

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Mary A. Bragg,

Plaintiff,

Hon. Hugh B. Scott

v.

04CV933S

**Decision
&
Order**

Certaineed Corp,

Defendant.

Before the court is the defendant's motion to compel discovery (Docket No. 9).

On April 26, 2005, the defendant served various discovery requests upon the plaintiff. The plaintiff failed to respond to the discovery requests in any manner. On August 8, 2005, the defendant filed the instant motion seeking to compel the plaintiff to provide the requested discovery. Despite the Court's order directing the plaintiff to respond to the instant motion (Docket No. 12), the plaintiff did not file a response to the motion as directed.

As of September 19, 2005, the date of oral argument with respect to the motion, the plaintiff had still not yet responded to the defendant's discovery requests or to the instant motion seeking to compel discovery. Counsel for the plaintiff does not dispute that he has not yet responded to the defendant's discovery requests, but stated that he intends to do so soon.

The motion to compel is granted. The plaintiff is directed to respond to the defendant's discovery requests no later than October 3, 2005.

The defendant also seeks the imposition of costs and attorneys fees under Rule 37 of the

Federal Rules of Civil Procedure. Rule 37(a)(4)(A) also provides that “[if] the motion [brought under Rule 37] is granted or if the disclosure or requested discovery is provided after the motion was filed, *the court shall*, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney’s fees, *unless* the court finds that the motion was filed without the movant’s first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party’s nondisclosure, response, or objection *was substantially justified*, or that other circumstances make an award of expenses unjust.”

In the case at hand, the plaintiff has failed to demonstrate any justification for the failure to make any attempt to respond to the discovery demands in a timely manner. The Court must award costs and attorneys fees incurred by defendants in connection with bringing the instant motion. The defendant is directed to submit an affidavit with the Court by October 14, 2005 detailing the costs incurred, and itemizing the attorneys fees charged in connection with the instant motion. The plaintiff may respond to the fee application in writing by November 18, 2005. The Court will determine the fee request without further argument unless otherwise determined upon review of the papers.

Conclusion

Defendant’s Motion to Compel (Docket No. 9) is GRANTED.

So Ordered.

s/Hon. Hugh B. Scott
United States Magistrate-Judge

Buffalo, New York
September 27, 2005